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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1983

GORDON H. FAULKNER, et al.,

Petitioners,

vs.

BRUCE D. WELLMAN, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether there are special and important reasons for the Court to review the judgment of the United States Court of Appeals for the Seventh Circuit that the overcrowding and inadequate medical cae at the Indiana State Prison are in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

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STATEMENT OF THE CASE

The statement of facts found in the Petition For Writ of Certiorari is inaccurate, misleading and argumentative. This statement of the facts is taken verbatim from the Argument section of the brief filed by the petitioners in the United States Court of Appeals for the Seventh Circuit. See, Brief of Defendants-Appellees, Cross-Appellants at 13-14 and 17-22.

The trial of this case was an intensive scrutiny of the conditions of confinement and the medical care provided at the Indiana State Prison (hereinafter I.S.P.). The trial was conducted inside the walls of the I.S.P and consumed eleven days of the court's calendar. Petition For Writ of Certiorari at 4. The court heard 111 witnesses and received several hundred exhibits. Supplemental Appendix at B-26. The transcript is 2,254 pages in length and the court wrote a 194 page opinion. Condensation of this sizeable record is difficult, but the petitioner's statement of the facts is a distorted view of the evidence which was considered by the Honorable Allen Sharp, United States District Judge. The petitioners' statement of facts ignores the findings of facts rendered by Judge Sharp and is a compilation of opinions of the defendants and their employees and consultants.

Judge Sharp's opinion made many important findings of fact. The district court found that "[t]he I.S.P. is an all male maximum security correctional facility, which has been in existance at the present location approximately 120 years." Supplemental Appendix at B-12. Inmates confined in the I.S.P. are housed in unusually small cells. Judge Sharp held: "Indeed every standard for prison living conditions requires more distinct, severable room for individual inmates than is available at the I.S.P." Supplemental Appendix at B-182. Some non-disciplinary inmates

are housed in cells as small as 38 square feet in size for 23 and one-half hours per day. Supplemental Appendix at B-59.

The opinion of the district court describes an old, decrepit prison. The district court found that "[l]eaking pipes and defective plumbing are not an uncommon problem." Supplemental Appendix at B-190. This conclusion is supported by an inspection of the plumbing conducted by a contractor hired by the defendants. The contractor concluded that essentially the entire waste and vent system of the cell houses must be replaced and the plumbing fixtures in the cells are "not suitable for the occupancy." TR 1424; Pl.'s Ex. 91 at p. 4 and Pl.'s Ex. 92. For example, in "A" cell house the defendants' own contractor found defects in the plumbing in three hundred seven (307) of the three hundred forty (340) cells inspected. Pl.'s Ex. 91 at p. 8-28.

The court's finding was also supported by the testimony of Mr. Samuel Hoover, a public health officer, who found over five hundred cross-connections between the drinking water system and the sanitary sewer system at the I.S.P. Supplemental Appendix at B-107. A cross-connection between the drinking water system and the sanitary sewer system "creates a real and imminent threat of contamination of the drinking water provided to the inmates." Suplemental Appendix at B-107. Mr. Hoover identified over 161 water leaks in the plumbing system in the cell houses and numerous leaks in the sewer lines which were releasing hazardous methane gas in the cell houses. Pl.'s Ex. 306 at p. 2-4. Escaping methane gas creates the potential for an explosion in the cell house. This threat is exacerbated by exposed wiring which was found in the pipe chase area of the cell houses. Supplemental Appendix at B-106. This conclusion was reinforced by the report of the chief inspector for the Indiana State Fire Marshall. This inspector advised the defendants that numerous

"remedial activities are necessary. . . all electrical wiring shall be upgraded to a safe condition." Pl.'s Ex. 90 at p. 1.

The district court found that "the conditions in the main food service area showed a difficiency in routine maintenance and cleaning procedure." Supplemental Appendix at B-190-91. Judge Sharp further described I.S.P. as follows:

> In addition there is a problem with rodent and insect infestation. Trash, food and other material litter the cells and corridors in some places, conditions which are the product of the inmate's own actions. Some shower drains were similarly obstructed, providing areas for mold and slime to build up. Exposed electrical wiring did pose some hazards but again the evidence is that the inmates take the covers off the junction boxes. There is evidence that in some instances inmates are not provided with enough cleaning supplies to clean their own cells. Finally, the mattresses seem to suffer from irregular maintenance and cleaning procedure. Supplemental Appendix at B-190.

In addition, the memorandum opinion of the district court recites the following observations made by Mr. Samuel Hoover, the retired Director of the Division of Preventive Health Services of the United States Public Health Service:

> Ventilation and temperature conditions in the I.S.P. can be an environmental health hazard during hot, humid, climatic conditions. . . No area was found to meet [American Public Health Association] standard, and six out of ten areas tested had no detectable ventilation. Supplemental Appendix at B-108.
>
> * * *
>
> Lighting in the I.S.P. is very deficient relative to any past or present standard promulgated for adequate vision in the United States. Supplemental Appendix at B-108.
>
> * * *
>
> The milk coolers were very dirty and in poor repair. Supplemental Appendix at B-111.
>
> * * *
>
> In the kitchen area food was stored directly on the floor and in non-food grade containers

such as Rubbermaid garbage cans. Supplemental Appendix at B-111-12.

* * *

In the bakery the equipment was dirty but supposedly ready for reuse. Supplemental Appendix at B-112.

* * *

The I.S.P. laundry facilities do not meet institutional standards. Supplemental Appendix at B-112.

* * *

In regard to recreational facilities... the toilet and shower facilities are inadequate to serve the 400-600 inmates who use it on a daily basis. These shower facilities, five shower heads in all, serve as extended facilities for the cell houses whose shower fixture ratio is beyond any standard or realistic use potential. Supplemental Appendix at B-112.

* * *

None of the housing units has sprinkler systems nor had any fire drills been conducted for inmates. Ladders were used in D Cell House as a second exit in violation of 1976 Life Safety Code of the National Fire Protection Association. Stairways should be installed from the upper floors. The distance from the furthest point of habitation in B and D Cell Houses exceeds the maximum travel distance of 150 feet to an exit by 100 feet in some instances. All cell doors are key locked after 9:00 o'clock P.M. and the keys are returned to the control room of the guard hall. Thus, in the event of fire in a cell house each cell would have to be unlocked manully (sic) to release the inmate. Supplemental Appendix at B-106-07.

The United States Court of Appeals for the Seventh Circuit summarized the record as follows:

> Michigan City's physical plant is more than one hundred years old. Given its age, it is not surprising that there are problems with plumbing, electrical wiring and rodent and insect infestation. Routine maintenance in the cells, corridors and main food service area is deficient. As discussed above, the medical care system makes unnecessary suffering inevitable, and overcrowding simply heightens this pain. Overcrowding also has resulted in extremely limited time for outside recreation and unreasonable periods of time some prisoners must spend locked in

> exceedingly cramped cells. For example, prisoners in the A & O Unit have been spending between 22 and 23 1/2 hours per day in their cells, although the cells' floor space only amounts to 17 square feet. There was testimony that some inmates have not had outside recreation in five months. There has also been an extreme shortage of prison personnel in recent years. Appendix at A-13. (emphasis in original)

The petitioners 'factual description of medical care provided inmates at the I.S.P. also ignores the findings made by the district court and the description of the system by the United States Court of Appeals for the Seventh Circuit. The seventh circuit concluded that "unnesessary suffering is inevitable" because of the "gross deficiencies in staffing, the shocking delays in treatment and the ongoing severe problems in stocking needed supplies." Appendix at A-12.

The district court made numerous other findings which are examples of the level of medical care provided for the inmates. Inmate Finken, an epileptic since birth who required medication three times a day, failed to receive his medication for a whole month. At the end of the month, Mr. Finken was involved in a confrontation with an officer which resulted in personal injury to Mr. Finken. Mr. Finken requested a sick call pass but was not taken to the hospital until a week and one day later when x-rays discovered a broken rib. Supplemental Appendix at B-164-66.

Inmate Stewart Brooks continues to suffer the effects of a fractured bone being reset by an inmate, pursuant to the instructions of the I.S.P. physicians assistant. The district court said, "[t]his Court is acutely sympathetic to the apparent medical mistreatment suffered by plaintiff Brooks." Supplemental Appendix at B-50.

Judge Sharp found that the prison dentist had instructed inmate Sam James to pull the teeth of other inmates. When he was

took two dentists two hours to remove the broken tooth. Supplemental Appendix at B-174.

Plaintiff Wellman broke a tooth on a rock in the beans at the I.S.P. dining hall. Despite his numerous requests to see a dentist, he was not given an appointment with a dentist until nine months after the injury. At that time he paid an inmate clerk three boxes of cigarettes and received the appointment with the dentist immediately. Supplemental Appendix at B-26.

James Odis Hendrix sought medical treatment for a stomach disorder for two years before he was able to see any medical personnel. Supplemental Appendix at B-174. The district court awarded Mr. Hendrix five hundred dollars damages for this denial of medical care. Supplemental Appendix at B-193.

Mellon Carrol had an abscess on his buttock which had gone largely untreated since 1975. The condition, which makes it painful to sit or walk, continued to persist at the time of trial, and the court awarded Mr. Carrol $1,000 damages. Supplemental Appendix at B-175 and B-193.

Grady Thomas Bobbit sought treatment for a dental problem from 1975 until 1977 at which time the problem was solved by extraction of a tooth. The court awarded Mr. Bobbit $500 damages. Supplemental Appendix at B-175 and B-193. The damage awards to these three inmates were vacated by the court of appeals on respondeat superior grounds and the matter remanded "for clarification and an appropriate disposition." Appendix at A-18.

The opinion of the district court reviews the testimony of numerous inmate witnesses, but for unexplained reasons makes no mention of the testimony of other witnesses, both inmate and non-inmate, many of whom testified about medical care. The court of

appeals said, "in the instant case, we think the record contains sufficient evidence of repeated instances of negligent medical treatment together with evidence of general systemic deficiencies to establish that there is a deliberate indifference to serious medical needs such that unnecessary suffering is inevitable." Appendix at A-8. In addition to those examples cited by the court of appeals, the record contains many other "repeated instances of negligent medical care." The following is a brief compilation of some of those instances:

> Inmate Pasha was bitten by a rat in his cell. Correctional officers refused to take him to the infirmary for treatment and simply gave him some "methylate" (sic) on a Q-tip to clean the bite. TR 409-10.
>
> Carl Sanderson developed infection in a surgery scar while the prison was "under lock." The cellhouse officer refused to take him to the infirmary and he had to lance the infection himself. TR 415-16. The same inmate was, for the same injury, given a defective cast which wore through but the I.S.P. doctor refused to replace it. TR 414-16.
>
> Inmate Cooley died in the prison infirmary the day after asking a physician's assistant for nitroglycerin pills for his heart condition. The physician's assistant refused to give him the medication because he had just been given some pills two or three days before. TR 421-22.
>
> Inmate Gary Hurin was returned to the

I.S.P. infirmary from a psychiatric hospital in a very depressed condition. The I.S.P. doctor refused to keep him in the infirmary and put him in a disciplinary lock-up unit where he committed suicide by slashing his wrists and hanging himself. TR 422-23.

Cleophus Williams injured a finger playing handball in August of 1978 and reinjured it playing basketball later in 1978. The finger was not x-rayed until August, 1979 at which time it was discovered that there was a broken bone in the finger. At that time the doctor recommended surgery which was performed seven months later in March, 1980. TR 450-51.

Inmate Williams was given a routine blood test when he entered the I.S.P. in October, 1977. In August, 1978, he was advised that the test showed that he had syphilis and treatment was commenced. TR 451-52.

Kareem An-noor was given a prescription by a doctor for Benadryl to treat an allergy problem. Despite the prescription he never received the medication, and the doctor told him that the warden had told the doctor that the inmate could not have that prescription. TR 485-86.

Arthur Pierce, Jr. was given a prescription for a special diet because of his diabetes. A few days after receiving the prescription, Mr. Pierce was told by the doctor who prescribed it that he could not

receive the diet because the warden said they do not have a diet for diabetics. TR 492-93.

Mr. Pierce, who is on continuous medication for his diabetes, testified that each time a prescription ran out, the inmate had to go to the infirmary for a new prescription. This procedure always resulted in a 3 to 4 day period without the medication. TR 490-91.

The emergency medical procedure included sending untrained inmates from the infirmary to respond to emergency calls. An inmate described in detail how he was sent to a cellhouse to respond to an emergency call that an inmate had been stabbed. The untrained inmate tried unsuccessfully to treat the victim who died of the stab wounds. TR 499-501. A different inmate described two stabbing incidents in the cellhouse where untrained inmate attendants provided the only response to an emergency call for assistance. In both cases the inmates tried to treat the stabbing victims, but in both cases the victims died. TR 531-34.

An I.S.P. physician's assistant testified that inmate Clyde Tinsley suffered a heart attack at the prison at 8:30 p.m. on January 2, 1981, three days prior to the trial of this case. The physicians assistant was called to the prison to provide emergency assistance. Upon his arrival he called for the doctor to assist but the doctor refused to come to the

removed to a hospital. TR 646-47.

The court of appeals' opinion summarizes the medical care provided for James Stubblefield, a 47 year old inmate who died of a heart attack. Mr. Stubblefield was treated at the prison infirmary for 9 hours by medical technicians before he was sent to a hospital. A medical technician is the equivalent of an orderly. TR 651. On four occasions the medical technician requested the doctor to come in to see the inmate, but on each occasion the doctor refused. Appendix at A-11.

Psychiatrist Frank Rundle described inmate Kaiser as suffering from a chronic schizophrenic illness with repeated exacerbations and remissions. Dr. Rundle, in his uncontradicted testimony, stated that it was impossible for this inmate to receive, at the I.S.P, the kind of medical treatment which would prevent this cycle. Dr. Rundle testified, "the occurence of repeated episodes during which such an individual becomes floridly psychotic is accompanied by a progressive deterioration in psychological and intellectual functioning which leads to more and more serious impairment of that person's capability of adjustment." TR 1004.

Dr. Rundle testified that inmate Deel, an inmate confined to a lock-up unit at the I.S.P. was suffering from a "chronic schi-

schizophrenic illness which required medication for an indefinite period and regular supervision by a psychiatrist." TR 1008. No psychiatrist was available at the I.S.P.

Dr. Rundle found inmate Bell to be "a man who has experienced a serious psychotic illness who was appropriately treated at the hospital with medication and who, in my opinion, should have been seen for regular evaluation after returning to prison and continued medication. And quite predictably, without that, his symptoms would reoccur." TR 1010-11.

Dr. Rundle testified that inmate Jones was "manifesting symptoms of a serious psychotic illness which I would place again in the schizophrenic category." TR 1011. Dr. Rundle testified that inmate Jones had been in the lock-up unit for some months, had never been seen by a psychiatrist nor received medication, and "in my opinion, that man [Jones] should have been in a hospital on the day that I examined him." TR 1012.

Shorobbie Carter was bitten by a rat while he was removing food from a food cart in June, 1979. He was taken to the I.S.P. infirmary technician. The medication used in the shot had an expiration date of January 9, 1978, nearly one and one half years prior to its usage. TR 302-06.

In addition to this uncontroverted evidence, the court heard

evidence of many other examples of the medical care provided to inmates at the I.S.P. In many of these cases, doctors gave the court conflicting opinions as to the adequacy of the treatment.

SUMMARY OF ARGUMENT

Special and important reasons for this Court to review the decision of the United States Court of Appeals for the Seventh Circuit do not exist. This Court has developed the eighth amendment standards as they relate to overcrowding and medical care in prisons. The Fourteenth Amendment to the Constitution of the United States applies these standards to the states. The court of appeals properly applied those standards to the evidence in the record.

The record demonstrates that the Indiana State Prison (hereinafter I.S.P.) is a dismal, ancient prison where inmates are housed in small cells for long hours every day. The judgment of the district court that the I.S.P does not have the capability of housing more than 1,615 persons is a narrow constitutional holding supported by the record, which would have supported a much broader, more intrusive remedy.

The court of appeals correctly concluded that evidence of systemic deficiencies in the medical care delivery system and repeated examples of inadequate medical care demonstrated a deliberate indifference to the well being of inmates which made suffering inevitable.

ARGUMENT

The United States Court of Appeals for the Seventh Circuit found two constitutional deficiencies in the conditions of confinement at the Indiana State Prison. Appendix at A-6. First, the court found that the medical care delivery system at the Indiana State Prison (hereinafter I.S.P.) does not satisfy the "minimum level of medical service [which] must be maintained to avoid the imposition of cruel and unusual punishment." Appendix at A-12. Second, the court of appeals affirmed the district court's holding that the Indiana State Prison is unconstitutionally overcrowed.

The only reason the petitioners cite to this Court for the issuance of a writ of certiorari to review this judgment of the court of appeals is that "The Seventh Circuit has Erroneously Decided a Question in a Way in Conflict with Controlling Decisons of this Court. . ." Petition For Writ of Certiorari at 11. The reason asserted by the petitioners is not a "special and important reason" for the issuance of the writ as to either of these two questions. United States Supreme Court Rule 17.

This Court has defined the standards, imposed by the Eighth and Fourteenth Amendments to the Constitution of the United States, which limit the conditions in which an individual can be incarcerated by a state. In Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), the Court defined the standard for evaluating the medical care which must be provided to persons incarcerated by a state. In Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981), the Court defined the standard used to determine whether the conditions in which the individual is confined are consistent with the Eighth Amendment.

The standards defined by this Court in Rhodes v. Chapman and Estelle v. Gamble, are as specific and workable as is humanly

possible. Prior to Chapman many federal courts, both district courts and courts of appeal, defined the eighth amendment standard as it applies to prison conditions and overcrowding. See Rhodes v. Chapman, 452 U.S. 337 (1981) (Brennan, J. concurring). The Court's opinion in Chapman resolved any prior doubt as to what is the appropriate definition of the eighth amendment standard.

It is, of course, the function of this Court to provide the standard by which the conditions in a particular prison should be evaluated. Once that standard has been announced, it becomes the function of the district courts and the courts of appeals to apply that standard to individual claims for relief brought before those courts. It is not a part of the function of this Court to review routine prison cases, such as the present case, to determine whether the district court and court of appeals have correctly applied the standard to the facts.

Given the use of the appropriate standard by the district court and court of appeals, Justice Brennan's observation in Chapman is controlling. Justice Brennan said, "[e]ach of these descriptions has its merit, but in the end, the court attempting to apply them is left to rely upon its own experience and its knowledge of contemporary standards." 452 U.S. 337 (1981) (Brennan, J. concurring).

There is good reason for this allocation of functions. In the present case, the district court judge conducted a lengthy trial, inside the walls of the I.S.P., at which all parties were given a full opportunity to enlighten the court as to the medical care and the overcrowding at the I.S.P. The court heard from prison administrators, employees, inmates and experts first hand and experienced the atmosphere and the emotion of the prison during eleven full days of trial. In addition to the testimony,

the court looked at scores of pictures and reviewed hundreds of documents. Following the district court judgment, the entire record, including the transcript and all of the exhibits, were sent to the court of appeals for a reveiw by that court. Another appellate court review by this Court would be inefficient and purposeless.

It is clear that both lower courts followed Chapman and Gamble. This Court's opinion in Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981), was released after the trial of the present case, but before judgment. Upon publication of the Chapman opinion, the district court ordered counsel for the parties to brief Chapman, and the court rendered its judgment in this case only after receiving those briefs. Supplemental Appendix at B-189. The district court unquestionably decided this case by applying the standards defined in Chapman and Gamble to the evidence presented at the trial. Supplemental Appendix at B-14; B-186-89; and B-177. The court of appeals utilized the Gamble and Chapman standards in reviewing the judgment of the district court. Appendix at A-7 and A-14.

The petitioners have set forth no "special and important reasons" why this Court should issue a Writ of Certiorari to review the opinion of the court of appeals in this case.

While it is clear that the Chapman opinion establishes the controlling legal standard in this case, the actual holding of the Chapman case has no bearing on the present case. Factually the difference between the Southern Ohio Correctional Facility, which was an issue in Chapman, and the I.S.P., which is at issue in the present case, are as different as day and night. Justice Brennan described the Southern Ohio Correctional Facility as follows:

> From the district court opinion, I know that the prison is a modern, "top-flight, first class facility," built in the early 1970's at a cost of some $32 million, 434 F.Supp. 1007,

1009 (SD Ohio 1977). Judge Hogan, who toured the facility, described it as "not lacking in color," and, "generally speaking, . . . quite light and. . . airy, etc." Id. at 1011. The cells are reasonably well-furnished, with one cabinet-type night stand, one wall cabinet, one wall shelf, one wall mounted lavatory with hot and cold running water and steel mirror, one china commode flushed from inside the cell, one wall-mounted radio, one heating and air circulation vent, one lighting fixture, and one bed or bunkbed. Id. at 1011-1012. Prisoners in each cell block have frequent access to a day room, which is "in a sense part of the cells," and is "designed to furnish that type of recreation which an ordinary citizen would seek in his living room or den." Id. at 1012. Food is "adequate in every respect," and the kitchens and dining rooms are clean. Id., at 1014. Prisoners are all permitted contact visitation. Ibid. The ratio of inmates to guards is "well within the acceptable ratio," and incidents of violence, while not uncommon, have not increased out of proportion to inmate population. Id., at 1014-1015, 1016-1018. Plumbing and lighting are adequate. Id., at 1015. The prison has a modern, well-stocked library, with an adequate law library. Id., at 1010, 1010, n. 2. It has eight schoolrooms, two chapels, a commissary, a barber shop, dining rooms, kitchens, and workshops. Ibid. Virtually the only serious complaint of the inmates at the Southern Ohio Correctional Facility is that 1,280 of the 1,620 cells are used to house two inmates. 452 U.S. at 365.

The I.S.P. is not comparable to the Southern Ohio Correctional Facility in any of these descriptions. The I.S.P. is a very old prison "which has been in existence at the present location approximately one hundred twenty years." Supplemental Appendix at B-12. The cell blocks at the I.S.P. have nothing equivalent to the day rooms to expand the cell space available to the inmates. In contrast, the inmates at the I.S.P. are confined in very small cells for unreasonable periods of time. The seventh circuit found that "overcrowding also has resulted in extremely limited time for outside recreation and unreasonable periods of time some prisoners must spend locked in exceedingly cramped cells." Appendix at A-13.

The record in this case clearly demonstrates that the I.S.P. is being utilized far beyond its capability. Age and neglect have produced a physical facility with very limited usage. The limitations of the physical plant are compounded by shortages of staff and supplies resulting from limited funding. The court of appeals found that there has been "an extreme shortage of prison personnel in recent years." Appendix at A-13.

The personnel at the I.S.P. are not only deficient in their numbers, they are not adequately trained, (TR 20; 579-80) and they are inexperienced. Low pay and unsafe working conditions contribute to a turnover rate in excess of 30 per cent per year. TR 18-23. The security at the I.S.P. is provided by a poorly paid, untrained custody staff, one third of whom are new at any given time.

The district court and the court of appeals were obligated by the Chapman opinion to apply the Chapman eighth amendment standard to the conditions of confinement at the I.S.P. "Courts certainly have a responsibility to scrutinize claims of cruel and unusual confinement, and conditions in a number of prisons, especially older ones, have justly been described as 'deplorable' and 'sordid.'" Rhodes v. Chapman. 452 U.S. at 352.

Judge Sharp discharged that responsibility in the following manner: "The analysis is that of the Eighth Amendment which compels consideration of the amalgam of conditions, past, present and future, which make up the prison. . . . This [population] ceiling arises from the Court's determination of the total capability of the correction system at the I.S.P." Appendix at A-4.

The court of appeals agreed that "at current population levels Michigan City's physical and personnel resources are so overtaxed that unnecessary suffering is serious and inevitable." Appendix at A-13. The petitioners are asking this overworked

Court to duplicate the review performed by the court of appeals.

In Chapman, this Court cautioned lower courts that "[i]n assessing claims that conditions of confinement are cruel and unusual, courts must bear in mind that their inquiries 'spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility.'" Rhodes v. Chapman, 452 U.S. at 351.

Judge Sharp and the court of appeals unquestionably followed this Court's admonition. Judge Sharp said, "[t]his Judge has indicated from the beginning of this case to the present time, a complete and utter distaste for having to cross that Rubicon which separates the federal government from the state government and enter into the morass of the day to day operation of the prison." Supplemental Appendix at B-15. In a pre-trial hearing on March 19, 1979, Judge Sharp said, "[t]he Judiciary should stay its hand, except where it's clearly mandatory in a constitutional sense." Court Proceedings, March 19, 1979 in Cause No. 79-32 at page 12.

The conditions at I.S.P. are nearly identical to many other cases in which broad, intrusive remedies have been ordered by the federal judiciary. The I.S.P. is similar to "Old Max" the institution at issue in Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980); cert denied, 450 U.S. 1041. On similar facts the district court in Colorado utilized the full breadth of the federal judicial power to remedy the unconstitutional conditions. Even a brief comparison of the two cases demonstrates vividly the restraint exercised by Judge Sharp. On remand from the court of appeals the district court ordered the following actions and much more:

1. 60 square feet of space for each person;

2. Lighting at 30 foot candles in each cell;

3. 10 cubic feet of fresh air per inmate in all living areas;

4. Reduce noise levels to 60 dB(A) where possible;

5. Hot and cold running water in each cell;

6. Required written daily routine of housekeeping and minimal level of cleanliness;

7. Unsanitary blankets and mattresses replaced;

8. Required preventive maintenance program;

9. Fire safety must satisfy Code;

10. Regular fire drills;

11. Buildings shall meet all building and electrical codes;

12. Inmates must be provided personal hygiene materials;

13. Procedure required for maintaining inventory of inmates personal property;

14. Staff shall be provided adequate training.

See, Ramos v. Lamm, 520 F.Supp. 1059, 1062-65 (D. Colo. 1981)

Remedies of the kind imposed in Ramos do inject the federal judiciary in the day to day operation of the prison. The record in the present case would have supported a similar broad constitutional holding and remedy, but the lower courts exercised restraint.

Ruling on a motion filed by petitioners pursuant to Rule 59(e), Federal Rules of Civil Procedure, Judge Sharp said, "[t]his Court was fully aware of the evidence alluded to by the defendants, understood the ramifications of its order in regard to population ceiling, and in light of the evidence can only consider said order restrained." Appendix at A-4.

The court's restraint produced an order which will have no negative impact on the day to day operation of the I.S.P. The population ceiling will restrict the flexibility of state officials who decide to which prison each individual inmate should be assigned, but will not interfere in any way with the administration of the I.S.P. The order requires no ongoing scrutiny by the court, no periodic compliance reviews and no subsequent judgments as to whether the defendants have complied with the court's order. The memorandum opinion reflects a diligent effort by the court to decide the case on the narrowest possible constitutional grounds and to impose the narrowest possible remedy, and it succeeded. Any narrower holding would have constituted a total abdication of the court's responsibility as defined in Chapman.

The United States Court of Appeals for the Seventh Circuit held that the district court was too restrained in ruling on the adequacy of the medical care at the I.S.P. The district court judge's "utter distaste" for entering "the morass" led to an erroneous application of the standard of Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed. 251 (1976). The record compels the court of appeals' conclusion that "the record contains sufficient evidence of repeated instances of negligent medical treatment together with evidence of general systemic deficiencies to establish that there is a deliberate indifference to serious medical needs such that unnecessary suffering is inevitable." Appendix at A-8.

This Court recognized in Gamble that:

> An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death," In re Kemmler, supra, the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. 429 U.S. at 103.

The petitioners' contention that the judgment of the seventh circuit was based on "unrelated and isolated incidents" is a blatently erroneous characterization of that court's opinion. Petition for Writ of Certiorari at 14. The unanimous decision of the court of appeals is plainly based upon a careful evaluation of the entire, lengthly record. The "isolated incidents" are merely examples of what is contained in the record. The court said, "[w]e think the record contains sufficient evidence of repeated instances of negligent medical treatment together with evidence of general systemic deficiencies to establish that there is deliberate indifference to serious medical needs such that unnecessary suffering is inevitable. For example, ..." Appendix at A-8 (emphasis added). Following the "for example" the court referred to the evidence which petitioners characterize as "isolated incidents."

Petitioners' attack on the opinion of the court of appeals is based on the erroneous principle that the court of appeals is obligated to identify, in its opinion, each piece of evidence which it deems to support the judgment. No authority for this principle is cited by the petitioners because no such principle exists. The opinion gives some examples of the evidence in the record, but it did not include in the opinion, nor could it be expected to include in the opinion, a recitation of all evidence

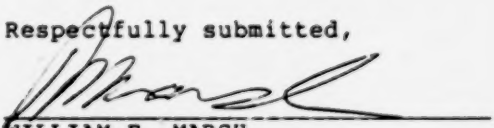
in the 2,000 plus page record which supports its conclusion.

The petitioners' prayer for relief from this Court on the medical care judgment is identical to its prayer on the overcrowding judgment. The petitioners would have this Court duplicate the review performed by the United States Court of Appeals for the Seventh Circuit. This request is not a "special and important reason" for this Court to grant the Writ of Certiorari.

CONCLUSION

The Petition for Writ of Certiorari does not state any "special and important" reason why this Court should grant the Writ of Certiorari. The United States Court of Appeals for the Seventh Circuit used the proper Eighth Amendment standards in deciding this case and another appellate court review of the lengthy record would be duplicative. The Petition For Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit should be denied.

Respectfully submitted,



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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1983

GORDON H. FAULKNER, et al.,

Petitioners,

vs.

BRUCE D. WELLMAN, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RESPONDENTS' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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Attorneys for Respondents

RESPONDENTS' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondents Dwight Walker and Billie R. Adams, by counsel respectfully move pursuant to 28 U.S.C. §1915 and Rule 46, Rules of the Supreme Court of the United States for leave to proceed in forma pauperis in this cause.

The undersigned serves as counsel for a class consisting of "those prisoners who are, or may be in the future, confined at the Indiana State Prison, Michigan City, Indiana." Supplemental Appendix at B-15 and B-21. Only two of the named plaintiffs, who are the representatives of the class, are currently confined at the Indiana State Prison. The affidavits of those two, Dwight Walker and Billie R. Adams are attached hereto.

Respondents did, with leave of the court, proceed in forma pauperis in the United States Court of Appeals for the Seventh Circuit in this action.

Respondents did not seek leave to proceed in forma pauperis in the United States District Court for the Northern District of Indiana in this action.

WHEREFORE, Respondents, Dwight Walker and Billie R. Adams, individually and as representatives of the class certified by the district court, pray that they be allowed to proceed in forma pauperis in this Court without prepayment of fees and costs or security therefor.

Respectfully submitted,

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Attorneys for Respondents

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Billie R. Adams, being first duly sworn, depose and say that I am the Respondent in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceedings or give security therefore; and I believe I am entitled to redress.

I further swear or affirm that the following statements relating to my ability to pay the costs of participating in this proceeding are true.

1. I am presently incarcerated as an inmate at the Indiana State Prison in Michigan City, Indiana. I am employed as an inmate worker inside the prison where my daily wage scale is $1.10 I have been continuously incarcerated at the Indiana State Prison since 1972, and have had no employment other than inmate labor during that period of time.

2. Within the last twelve months, I have received no income from a business, profession or other form of self employment, or in the form of rent payments, interests, dividends or any other source.

3. My only cash or checking or savings account is my inmate account at the Indiana State Prison and the balance in my inmate account is $24.17.

4. I do not own any real estate, stocks, bonds, notes, automobiles or other valuable property.

5. No other persons are dependent upon me for support.

that the foregoing representations are true and accurate to the best of my knowledge, information and belief.

DATED: 11/18/83

Billie R. Adams
BILLIE R. ADAMS

Subscribed and affirmed before me a Notary Public this 18th day of November, 1983.

John Leonard Barnes
Notary Public (signature)

JOHN LEONARD BARNES
Notary Public (printed)

My Commission Expires:
My Commission Expires October 7, 1986

County of Residence:
Porter

I, Dwight Walker, being first duly sworn, depose and say that I am the Respondent in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceedings or give security therefore; and I believe I am entitled to redress.

I further swear or affirm that the following statements relating to my ability to pay the costs of participating in this proceeding are true.

1. I am presently incarcerated as an inmate at the Indiana State Prison in Michigan City, Indiana. I am employed as an inmate worker inside the prison where my daily wage scale is $1.10 I have been continuously incarcerated at the Indiana State Prison since Feb. 6, 1973, and have had no employment other than inmate labor during that period of time.

2. Within the last twelve months, I have received no income from a business, profession or other form of self employment, or in the form of rent payments, interests, dividends or any other source.

3. My only cash or checking or savings account is my inmate account at the Indiana State Prison and the balance in my inmate account is $50.00.

4. I do not own any real estate, stocks, bonds, notes, automobiles or other valuable property.

5. No other persons are dependent upon me for support.

I, Dwight Walker, affirm under the penalties of pejury that the foregoing representations are true and accurate to the best of my knowledge, information and belief.

DATED: NOVEMBER 18, 1983 Dwight Walker
DWIGHT WALKER

Subscribed and affirmed before me a Notary Public this 18 day of NOVEMBER, 1983.

Eugene Mohamed
Notary Public (signature)

EUGENE MOHAMED
Notary Public (printed)

My Commission Expires: OCTOBER 11, 1986

County of Residence: LA PORTE

END OF DOCUMENT